REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1 and 3-4 remain pending in the application. Claims 2 and 5-8 have been cancelled.

Claims 1-4 are rejected under 35 USC 112. In response, claims 1 and 3-4 have been amended and claim 2 has been cancelled. In claim 1, the terms "equivalence packet" was amended to the term "NULL packet." Accordingly, this rejection should be withdrawn.

The Examiner insists that the term "equivalence" as used in "equivalence packet" in claim 1 is unclear. The Examiner further insists that a limitation "either 0 or 1" in claim 2 appears to be inherent in "comparison data" in claim 1. In claim 1, the term "equivalence packet" has been changed to "NULL packet" and claim 2 has been cancelled. Accordingly, this rejection should be withdrawn.

Claim 2 is objected to under 47 CFR 1.75(c) as being of improper dependent form. In response, claim 2 has been cancelled and this rejection should be withdrawn.

Claims 1 – 8 are rejected under 35 USC 102(e) as being anticipated by Fischel et al. Applicant respectfully traverses this rejection.

According to amended claims 1, 3 and 4, the NULL packet is used for measuring the bit error. The packet includes the NULL packet for adjusting a transmission rate of the digital broadcasting. As disclosed in the present specification, "The MPEG TS includes the NULL packet 60 to be one kind of the TS packet 50 for the sake of adjustment of the transmission rate and so forth." (see page 7, lines 10 –11 of the present application). It should be noted that the NULL packet is not generated for measuring the bit error. According to amended claims 1, 3 and 4, the bit error can be measured even if no packet is generated for measuring the bit error, since the bit error can be measured by using the NULL packet.

On the other hand, Fischel et al. does not disclose that the bit error is measured by using the NULL packet for adjusting a transmission rate of the digital broadcasting. According to

Fischel et al., the test data must be generated for measuring the bit error (column 6, lines 54 – 65 of Fischel et al.). According to Fischel et al., the step for generating the test data is required. On the other hand, according to amended claims 1, 3 and 4, the step for generating the test data can be omitted. Therefore, amended claims 1, 3 and 4 are not anticipated under 35 USC 102(e) and the rejection should be withdrawn.

Claims 1, 3, 5 and 7 are rejected under 35 USC 102(b) as being anticipated by Huysmans et al. In response, claims 1 and 3 have been amended and claims 5 and 7 have been cancelled. Applicant believes claims 1 and 3 to be patentable over Huysmans et al. for the reasons discussed below.

According to amended claims 1, 3 and 4, the NULL packet is used for measuring the bit error. On the other hands, Huysmans et al. does not disclose that the NULL packet is used for measuring the bit error. Furthermore, according to Huysmans et al., the test data patterns (reproducible bit patterns) must be generated for measuring the bit error. Namely, according to Huysmans et al., the step for generating the test data patterns is required. On the other hand, according to amended claims 1, 3 and 4, the step for generating the test data patterns can be omitted.

Therefore, amended claims 1 and 3 are not anticipated under 35 USC 102(b) by Huysmans et al. and the rejection should be withdrawn.

Claims 4, 6 and 8 are rejected under 35 USC 103 as being anticipated over Huysmans et al. Applicant believes claims 4 is patentable over Huysmans et al. for the reasons discussed above and claims 6 and 8 have been cancelled. Therefore, this rejection should be withdrawn.

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including

extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such

deposit account.

Respectfully submitted,

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